

## Ultimate Access

### *Frase v. Barnhart*: Court of Appeals to Decide if a Constitutional Right to Counsel in Civil Cases

Last month, the State's highest court heard arguments in a case that may determine whether Marylanders have a right to counsel in civil matters.

Former Attorney General Stephen H. Sachs led a team of attorneys from the Public Justice Center to argue that their client, Deborah Frase, was at a significant disadvantage when she was compelled to represent herself in a case where an unrelated couple sought custody of her son, Brett Michael. Frase had placed the child in the care of appellees, Curtis and Cynthia Barnhart, for a period of time during which she was incarcerated. When she attempted to resume caring for him, the Barnhart's sought custody.



Frase sought the assistance of the pro se assistance project operated by the Circuit Court for Caroline County where she was advised to seek counsel. Unable to afford an attorney, Frase proceeded pro se. While she was able to retain custody of her son, the master ordered monthly visitation for Brett Michael and an older sibling who was not the subject of the custody petition.

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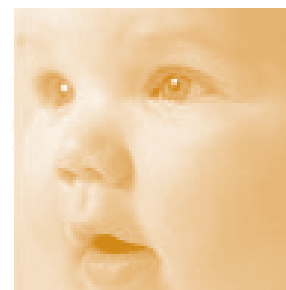
## Voluntary Placement of Children with Disabilities

### New Cause of Action in Juvenile Court

Maryland courts will soon begin hearing a new type of case involving children. Currently, the juvenile courts in Maryland handle two types of cases: Child in Need of Assistance (CINA) and delinquency cases. Effective October 1, 2003 a third case type, Voluntary Placement of Children With Disabilities, was added to the exclusive jurisdiction of juvenile court. The new cause of action provides for the continued placement of a child in the care of the Department of Social Services (DSS) without the loss of parental custody where the child has been voluntarily placed with the Department.

Parents often place children voluntarily in the care of DSS when a child is in need of medical or mental health services, which the parents cannot provide. To facilitate the voluntary placement an agreement is signed. The voluntary placement agreement is a binding written agreement between a local DSS and the parent or legal guardian of a minor child, that specifies the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the local department.

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# Keeping Reform Fresh

*Pamela Cardullo Ortiz, Executive Director*



My maternal grandfather was a big fan of Bert Parks. He resembled Bert Parks a little, in fact, and probably envisioned himself on that stage hosting the Miss America beauty pageant each year. Whenever I would enter a room (I know you will find this hard to believe) he would begin singing . . . "Here she comes . . . Miss America. . . " Unable to submit to this with any seriousness, I would put my fingers in my mouth to make a horrible grimace and with an exaggerated wiggle lob down my imaginary runway like Quasimodo on the Champs Elysees. That is as close as I have ever come, or care to come, to the rigors of the beauty pageant.

Advocating for continued funding for family court reform efforts, however, has been a little bit like trying to compete in a pageant without playing the beauty queen. During the 1990's, jurisdictions all over the country were setting up family courts, refashioning themselves as "problem-solving" courts and developing resources to make litigation a better experience for families and children. In short, family court reform was a hot topic.

Five years after Maryland instituted Family Divisions and Family Services Programs, other initiatives have captured the imagination of jurists and legislators. Federal and private funding agencies have changed their priorities. Everyone wants to fund the newest, latest idea.

Here at the Department of Family Administration, we, on the contrary have made it our business to ensure that, where possible, new programs will not be created at the expense of the old. We have

been successful in institutionalizing change and are only now beginning to really refine those innovations begun 3, 4 and 5 years ago. In the last year we have emphasized quality assurance, ensuring that the innovations made have had the impact that was originally intended.

The next phase in our family court reform efforts will be to ensure that those efforts reach into the courtroom to affect the quality of decisions being made every day on behalf of Maryland families. On December 9 we are sponsoring, along with the University of Maryland, the University of Baltimore, the Circuit Court for Baltimore City and the Custody Subcommittee on Family Law, an evening symposium on *Custody Decision-making in Maryland*. The aim of this event is to stimulate a dialogue about the various ways we can improve the quality of decision-making for Maryland families. That may include statutory reform, training, establishing new programs, or just refining existing ones. I invite you to come be a part of that conversation.

This new phase in our development may not be sexy. It may not dovetail with federal or State funding initiatives. But it has the potential to impact individual families more directly than many of the programs we have established over the last five years.

Reform is cyclical. What's hot today, will cool tomorrow. What is more important is whether, once instituted, those reforms continue to make a difference. Because as any former beauty queen knows, you may win the tiara today, but will your beauty last through tomorrow?

family matters

We welcome your comments and contributions.

Please call or write: Pamela Cardullo Ortiz, Exec. Director

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A quarterly publication of the Department of Family Administration of the Maryland  
Administrative Office of the Courts. Graphic design by Court Information Office.

# Juvenile Court, cont. from p. 1

The local DSS may not seek legal custody of a child under a voluntary placement agreement if the child has a developmental disability or a mental illness and the purpose of the voluntary placement agreement is to obtain treatment or care related to the child's disability that the parent is unable to provide. Additionally, a child may not be committed to the custody or guardianship of a local department and put in an out-of-home placement solely because the child's parents are financially unable to provide treatment or care for a child with a developmental disability or mental illness.

## The Court's Role

Maryland's juvenile courts will have exclusive jurisdiction over petitions for voluntary placement of children with disabilities. If a placement will exceed 180 days, a voluntary placement petition must be filed with the court. Once the petition is filed, the court must schedule a "voluntary placement hearing" within 30 days from the filing of the petition. At that hearing the court will determine whether continuing the voluntary placement is in the best interests of the child. During the voluntary placement hearing the court should:

1. inquire as to what specific services have been put into place under the voluntary placement agreement;
2. inquire as to why the voluntary placement and specific services are in the best interest of the child, as well as whether continuation of the placement is in the child's best interest;
3. inquire as to why remaining in the home would have been contrary to the welfare of the child; and
4. make the following findings: whether continuation of the placement is in the child's best interest; whether reasonable efforts have been made to reunify the child with the family or place the child in a timely manner in accordance with the child's permanency plan; and whether remaining in the home would have been contrary to the welfare of the child.

A permanency planning hearing must be scheduled for a child that has been voluntarily placed no later than 11 months after the child has been placed. The permanency plan must be reviewed every six months until the voluntary placement is terminated.



Serve the Public and Get *Pro Bono* Hours

## Representing Parents in CINA Matters

The Foster Care Court Improvement Project (FCCIP) is encouraging attorneys with some experience and interest in juvenile court to volunteer to represent parents and guardians in Child in Need of Assistance (CINA) cases. You can earn *pro bono* hours if you take a case at a reduced fee, and, of course, if you waive your fee altogether. While the Office of the Public Defender represents the majority of parents involved in CINA and related cases, there are also a fair number of cases that involve a parent who is not eligible for the public defender, and who, at the same time, cannot afford to hire an attorney, at least not without some significant fee reduction.

These cases deserve the very best representation that the Bar can provide. The FCCIP is hopeful that the private Bar will continue to demonstrate their generosity and commitment to those in need. If you are interested, or have questions about volunteering, please contact your local Public Defender's office or Vanita Taylor, Esq., Chief Attorney of the CINA Division, State Public Defender's Office at (410) 223-3780.

# Ethics Opinion Highlights Use of Custody Evaluations

## Pre-Trial Review of Evaluation Is OK; Subject to Due Process

In a recently reported opinion, the Judicial Ethics Committee considered whether it is permissible for a trial court judge to receive and review a written report prepared as the result of a court-ordered investigation prior to trial. The issue presented asked whether the submission of such a report would constitute an *ex parte* communication in violation of the Maryland Code of Judicial Conduct. The committee concluded that consideration of a written report prior to trial will *not* violate the Code if the report is provided to the parties and they are given the opportunity to challenge the contents. The opinion (No. 2003-10), issued August 27, 2003, acknowledges the significant role that custody and home study investigations play in child access cases, adoptions, guardianship matters and terminations of parental rights. The committee noted that statutes, rules, and case law do not address how and when reports are provided to a court in this context, although case law delineates what the trial court does with those reports once they are in the court's possession.

Following that case law, the committee concluded that “. . . if a trial court orders a home study investigation or a custody investigation, the court then may receive that report and shall share it with the parties or their attorneys. The court then may rely on that report in making its determinations at trial subject to the right of the parties or their attorneys to cross examine the author under oath; to present countervailing evidence to discredit the report in any of its material aspects; and, alternatively, to present supportive evidence.”

The committee has recommended, however, that the Standing Committee on Rules of Practice and Procedure consider the need for standard rules governing these types of reports, on which courts increasingly rely. The Rules Committee has begun such consideration. A copy of the opinion may be found at: <http://www.courts.state.md.us/ethics/op200310.pdf>.

## Kudos to CASAs

At their annual joint meeting in San Juan, Puerto Rico on July 31, 2003, the Conference of Chief Justices and the Conference of State Court Administrators adopted a resolution [below]; recognizing the efforts of CASA volunteers in the courts throughout this country. On behalf of Chief Judge Bell and Frank Broccolina, State Court Administrator, the Department of Family Administration would like to take this opportunity to acknowledge the outstanding work of CASA and its many volunteers. CASA programs in Maryland are a valuable resource that continues to provide an invaluable service, not only to the Judiciary, but to the citizens of Maryland. Many families in need continue to benefit from the quality and dedication of the well-trained CASA staff and volunteers.

### Resolution 6: In Recognition of CASA Volunteers Serving in Court

WHEREAS, courts are charged with providing accountability to the system responsible for protecting abused, abandoned and neglected children; and WHEREAS, courts, children's services agencies and other governmental agencies cannot fully address the needs of abused, abandoned and neglected children without complete information regarding their cases and their lives; and WHEREAS, citizen volunteers, including the Court Appointed Special Advocate (CASA) program, have assisted the courts in many ways in meeting the need for such information; and WHEREAS, there are more than 978 CASA programs in all 50 states and the District of Columbia with more than 70,000 CASA volunteers who provide more than 10,000,000 hours of service to children each year; NOW THEREFORE, BE IT RESOLVED, that the Conference of Chief Justices and the Conference of State Court Administrators: 1. Recognize and express appreciation to citizen volunteers who work with the court to assist our nation's most at-risk children, and encourage more citizens to volunteer; and 2. In particular recognize and commend the efforts and contributions of the CASA volunteers in assisting children before the court.

# A Different Class of Protection

## Juvenile Peace Orders

When an adult commits an act that causes bodily harm or places another person in fear of harm, our primary concern is protecting the victim. When the alleged perpetrator is a minor, the State has a broader range of options designed to protect the victim while addressing the minor's violent tendencies.

Peace orders were created in 1999 to allow individuals who are not eligible for a domestic violence protective order to file a petition for protection from another individual who committed any one of the following acts: (1) an act that causes serious bodily harm; (2) an act that places the victim in fear of imminent serious bodily harm; (3) assault in any degree; (4) rape or sexual offense or attempted rape or sexual offense in any degree; (5) false imprisonment; (6) harassment; (7) stalking; (8) trespassing; or (9) malicious destruction of property.

The District Court has exclusive jurisdiction over peace order proceedings except where the respondent is a *child* defined by statute as "a person under the age of 18 years" and where the victim is a person eligible for relief, as defined in §4-501 of the Family Law Article.

If filed in District Court, peace order proceedings involving juveniles are transferred to the juvenile

court. These cases differ in some ways from adult peace orders. An intake officer or State's Attorney institutes the proceedings instead of the victim. In addition, the violation of a peace order by a juvenile is deemed a delinquent act instead of a misdemeanor and a juvenile respondent is not entitled to the assistance of counsel at a peace order proceeding.

The intake officer will consider the complaint received by the Department of Social Services or the citation issued by a police officer and make an inquiry as to whether the court has jurisdiction and whether judicial action or an informal adjustment is in the best interests of the public or the child. The intake officer may then authorize, or refuse to authorize, the filing of the peace order request. If the intake officer files a peace order request with the court, the juvenile respondent shall have an opportunity to be heard on the question of whether the court should issue a peace order or the juvenile may consent to the entry of a peace order.

A peace order is effective for up to six months and may order the juvenile respondent to: (1) refrain from committing or threatening to commit any of the specified acts against the victim; (2) refrain from contacting, attempting to contact, or harassing the victim; (3) refrain from entering the victim's residence; (4) stay away from the place of employment, school, or temporary residence of the victim; and (5) direct the respondent or victim to participate in professionally supervised counseling.

If the intake officer denies authorization to file a peace order request, the intake officer shall inform the victim, arresting police officer and the person or agency that filed the complaint of the decision, the reasons for it and the right of review. The denial may be submitted for review by the Department of Juvenile Services area director for the area in which the complaint was filed.

For info. on peace orders or domestic violence contact Alexandra Miller at (410) 260-1727 or [alexandra.miller@courts.state.md.us](mailto:alexandra.miller@courts.state.md.us)



## Conducting Child Custody Evaluations

A two-day workshop for professionals who work with separating and divorcing families. **Dr. Philip M. Stahl**, Author, *Complex Issues in Child Custody Evaluations*.

**December 8-9, 2003**, University of Baltimore, Thumel Business Center, 11 West Mount Royal Avenue, Baltimore, Maryland

Sponsored by the Association of Family and Conciliation Courts and the University of Baltimore School of Law's Center for Families, Children and the Courts. For information about the program, continuing education or to register, contact AFCC at (608) 664-3750 or email: [afcc@afccnet.org](mailto:afcc@afccnet.org).



## A Family-Friendly Audit

# MD Prepares for Federal Child and Family Service Review

A federal performance audit will soon shed light on how effective Maryland's safety net for families and children has been. The Child and Family Service Review (CFSR) is a comprehensive review of the state's performance in child protective services, foster care, adoption, family preservation, family support, and independent living programs. Representatives from both the Maryland Department of Human Resources and the U.S. Administration for Children and Families (ACF) will conduct the CFSR. By identifying each state's strengths and needs, the CFSR process is designed to assist in improving child welfare services and outcomes for children and families in each state.

The state's review will occur in several stages including the statewide assessment, onsite review, and program improvement plan. Together the statewide assessment and the onsite review will look at how outcomes in the area of safety, permanency, and well-being are meeting the needs of children and families in Maryland. Additionally, the process will evaluate seven systemic factors affecting the state's ability to achieve positive results for children and families. The systemic factors to be reviewed are the state's information system, case review system, quality assurance system, staff training, service array, responsiveness to the community, and foster parent/adoptive parent recruitment and retention.

Following the statewide assessment and the onsite review, the ACF will assess Maryland's conformity in each of the outcomes and seven systemic areas. If the state is not found in substantial conformity in any of the areas, a program improvement plan (PIP) must be developed and implemented in order to avoid tough penalties.

Although the CFSR is a review of the entire state, only three sites are selected to conduct the actual onsite review. In Maryland, the three sites

selected for the onsite review are Allegany and Anne Arundel counties, and Baltimore City. Federal review teams for these sites have been fervently working to prepare for the rigorous onsite review process. The onsite reviews will include: (1) case record reviews; (2) interviews with children and families engaged in services; and (3) interviews with stakeholders, which could include judges, masters, court administrators, children's review board representatives, caseworkers and service providers. The actual reviewers will consist of both Federal and state representatives for each site.

Important dates for Maryland's CFSR process:

- September 2003  
Statewide assessment completed
- November 17-21, 2003  
Onsite reviews
- November 21, 2003  
State's CFSR debriefing
- March 2004  
Program improvement program due

Although at least 40 states and the District of Columbia have been reviewed, no state has passed the evaluation process yet. Even so, Maryland is hopeful that this process will highlight its strengths and perhaps facilitate even better collaboration among child welfare stakeholders in continuing the State's efforts to provide a quality comprehensive child welfare system.

To find out more about the CFSR process go to: <http://www.acf.hhs.gov/programs/cb/> or contact the Maryland Department of Human Resources at (410) 767-7902.



## What MD "Can Do" for Kids

# Talbot Co. Conference Features CINA, Delinquency Cases

This year, the Department of Family Administration/Foster Care Court Improvement Project ventured into new territory by extending the parameters of the annual judicial conference, allowing for a much more comprehensive, all inclusive event. The conference, entitled Child Abuse, Neglect, & Delinquency Options (C.A.N.D.O.) was held on October 20<sup>th</sup> - 22<sup>nd</sup> in St. Michaels, Maryland at the Harbortowne Conference Center. Conference attendees were welcomed by pleasant Fall days and the comforting waters of the Chesapeake Bay.

This year's conference presented a unique opportunity for 150 of Maryland's child welfare attorneys to participate in a specially designed training track to enhance their knowledge and practice in various areas of child welfare law. Additionally, a much-anticipated third day was finally added to the conference to showcase current trends and issues in delinquency for juvenile judges and masters. All three days offered both local and national experts who presented their expertise on a broad range of topics: social work for judges and masters, being an effective voice for your client, CINA & TPR mediation, defining placement options, the voluntary placement act, detention reform, ASFA, trial practice and case law. Dr. Isaiah Zimmerman opened the conference with his keynote address on "Judicial and Personal Balance in the Face of Child Abuse and Neglect Testimony."

The first day offered much anticipation and excitement for the nearly 220 conference participants as they all hurried off in various directions to their respective tracks. Both the attorney track and the judge and master track offered extremely informative sessions aimed at equipping and refreshing them with the knowledge necessary to better serve Maryland's children. Judges and masters were occupied with sessions on the "nuts and bolts" of CINA, TPR, and permanency planning (shelter through adoption and reasonable efforts), as well as using uniform court orders, while the attorneys were engrossed in sessions on trial practice, interviewing and communicating with children, child hearsay law and procedures for obtaining privileged information, DHR services, and legal updates.

The second day featured a more traditional arrangement with participants from the various disciplines enjoying equally informative plenary sessions on CINA and TPR mediation, defining placement options, the voluntary placement act, and being an effective voice for your client, presented by both local and national experts from as far away as Utah.

The third day of the conference began with a keynote address from Secretary Kenneth Montague, Maryland Department of Juvenile Services, followed by Judge Martin P. Welch's impressive presentation on the nuts and bolts of delinquency. Other sessions offered included detention reform, intake and assessment tools, peace orders, and disproportionate minority representation in the juvenile system.

Conference attendees left energized for another year and optimistic that Maryland C.A.N.D.O. what's necessary to make a difference in the lives of its children. We commend Judge David W. Young, Circuit Court for Baltimore City and the members of the Foster Care Court Improvement Project's Training Subcommittee, Judge Kathryn Savage, Circuit Court for Montgomery County and the members of the Foster Care Court Improvement Project's Representation Subcommittee and Judge Martin P. Welch, Circuit Court of Baltimore City and the Juvenile Law Subcommittee for a job well done!!!!

## Date Change

Bridge Over Troubled Waters: The 2<sup>nd</sup> Bi-annual MACRO Family ADR Initiative Conference, originally scheduled for November 20 has been postponed to Spring, 2004. A new date will be announced shortly.

For information, contact Jonathan Rosenthal at MACRO at 410-571-2600.

# Parents and Children Targeting Success (P.A.C.T.S.)

Rebecca Taylor, Coordinator,  
Circuit Court for Kent County

Parenting children ages two through 20 is the toughest job in the world. Three years ago that statement summed up the overriding need of families in Kent County as identified by a handful of advocates from several core local agencies. Ask any of the 100+ parents and children who have been served by P.A.C.T.S since its inception whether their assessment was accurate.

Parents and Children Targeting Success (P.A.C.T.S.), is a model mobile neighborhood parenting program that has been working well for families throughout Kent County, Md. P.A.C.T.S. emphasizes positive parenting and discipline techniques. Parents and children are encouraged to have positive communications and interactions with each other. Dr. William W. Tubman, Jr., who is an education and training specialist, serves as P.A.C.T.S. coordinator. The staff consists of a child care professional and two follow-up counselors.

P.A.C.T.S. is for all parents, especially those who have never had a parenting class or those who feel they need a refresher class. The program is free and any Kent County resident who has children can attend. Many parents volunteer to attend P.A.C.T.S. for better family relationships. Social services, juvenile services and other agencies or family members may make a referral to P.A.C.T.S. Each session averages between six and ten families. Confidentiality of all referrals is respected.

When a referral is made to the program the coordinator will first screen for learning problems or disabilities. If problem areas are found, parents may then refer the children to the education agency for further testing. Second, the coordinator will join the children with their parents in formulating a contract that will ensure improved school attendance and chore responsibility for fun daily and weekly rewards. Third, during the eight-week session participants will be brought up to date on parenting techniques, such as the following positive discipline strategies:

- Tell a child what to do rather than what not to do
- Hold high expectations for your child
- Recognize positive behavior
- Give directions in a positive way

P.A.C.T.S. is conducted at five different Kent County schools throughout each calendar year. Each session meets one evening per week for eight weeks from 5 pm to 9 pm. Family dinner is served from 6 to 6:30 pm at no charge. The program runs from 6:30 pm to 8:30 pm. Parent consultation can occur from 5:00 pm to 6:00 pm and from 8:30 pm to 9:00 pm. Parents do not have to have a child enrolled in the school to attend. Professional child care is provided including appropriate planned activities.

The mission of P.A.C.T.S. is to be available to every parent in Kent County. P.A.C.T.S. will work with families to facilitate positive parenting skills, thus enhancing better school participation and performance and family interaction. P.A.C.T.S. functions an outreach program of Kent Youth, Inc. The P.A.C.T.S. advisory board meets bimonthly to collaborate with its community partners. All agencies are encouraged to make referrals.





## Access to Justice

# Prince George's Multi-faceted Approach to Improving Access

Prince George's County Circuit Court Family Division is an example of the many methods courts can use to enhance access to justice. The court's programs include a *pro se* orientation course, a *pro se* assistance project, an information and referral center, and a paralegal unit.

The *Pro Se* Orientation Program is offered twice a month, during the evening at the circuit courthouse. It provides an overview of the divorce process, including terminology and definitions, grounds for divorce, residency requirements, forms, fees, summons and service, default, answer, hearing procedures and conduct, corroborative witnesses, exceptions, the "blue form" and questions and answers.

For more detailed questions and procedures, the court has a *Pro Se* Clinic run by the Law Foundation of Prince George's County. This no-cost clinic has attorneys and an intake specialist available to

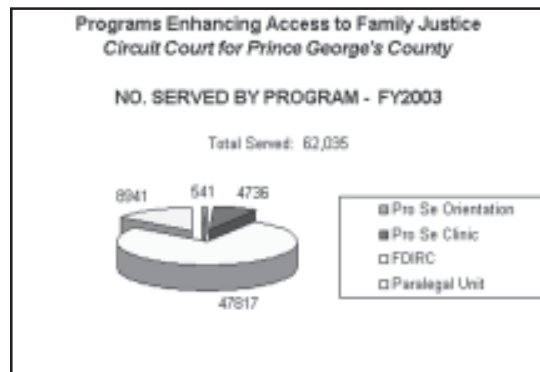
provide basic legal information, and referrals for legal representation and social service programs.

The Family Division Information and Referral Center (FDIRC) operates from 9:00 am to 4:30 pm, Monday through Friday. Trained personnel answer

questions and distribute forms for many family law case types. A phone center is also available for limited assistance and information. The FDIRC can also assist with child support guidelines and check the status of child support cases. The FDIRC serves as a centralized intake center for the court's family division. Within the FDIRC is the office of paralegals in which eight paralegals assist walk-in *pro se* litigants or

attorneys, review case files and make referrals.

The chart reflects the number of individuals served by each of the Circuit Court for Prince George's County's programs that enhance access to the family justice system.



## Fostering Case Management Skills

# Caseflow Course Aids Family Managers

On September 29 - 30, 2003, family and juvenile case managers, along with other interested court staff, attended a Family Caseflow Training Workshop at the Judiciary Training Center in Annapolis. The Department of Family Administration sponsored this one-and-a-half day workshop in response to a clarion call issued by Circuit Court Family Support Services Coordinators at their retreat last year for the need to better understand how more effectively to manage family cases. There were 35 attendees, representing family and juvenile courts throughout the State.

Alexander B. Aikman, a trainer and consultant from Redding, California, facilitated the workshop, during which he provided an overview of the principles of caseflow management. The overview included how critically important effective management of cases is to overall judicial management. Mr. Aikman shared best practices and provided the group with early intervention strategies, as well as a schema for developing differentiated case management plans in family cases. Throughout the day-and-a-half workshop, participants engaged in lively exchanges and offered excellent comments. To offer additional assistance and to address specific issues of individual participants, Mr. Aikman made himself available during breaks and at the end of the day for one-on-one sessions. Based on the positive evaluations received, the workshop was a success.

# Committee on Family Law Update

The Committee on Family Law met for the first time in September with its new chair, Judge Nancy Davis-Loomis (Circuit Court for Anne Arundel County) and several new members. The terms of several former members, including former chair Judge Larnzell Martin, and Judges Karen Murphy Jensen, John McDowell, Dennis McHugh, and Dexter Thompson have expired and those judges rotated off the committee. New committee members include: Judges Deborah Eyler, Sherrie Krauser, Michael Loney, Emory Plitt and James L. Sherbin.

At the September meeting it was confirmed that judges Holland and Eaves will continue to chair the Custody and Domestic Violence Subcommittees, respectively. Judge Weatherly agreed to chair the Child Support Subcommittee. At the time of this writing, a new chair for the Juvenile Subcommittee had not been identified.

The committee is collaborating with the University of Baltimore, Center on Families, Children and Courts to plan a statewide conference on substance abuse in family cases. The University of Baltimore has been awarded a \$25,000 grant by the Open Society Institute to pay for some of the costs of presenting the conference. Additional outside funding will be sought to provide for additional conference costs. The committee will be reviewing the *Pro Se Best Practices* document that was first presented to the committee in June.

## Child Support Subcommittee

The Child Support Subcommittee will be working on training, collaboration and dissemination of child support policies and procedures.

## Custody Subcommittee

The Custody Subcommittee, under the direction of its chair, Judge Marcella Holland, is working on three initiatives at this time: 1) The subcommittee has been monitoring the implementation of Baltimore City's Parenting Plan Pilot Project; 2) The subcommittee is planning a fall symposium on custody decision-making in conjunction with the University of Maryland, the University of Baltimore and the Administrative Office of the Courts (see p. 5 for more information on that event to be held December 9, from 5 - 8 pm in Baltimore); and 3) The subcommittee is developing a set of guidelines or standards for attorneys appointed to represent children in custody cases in Maryland. For more information on the work of the Custody Subcommittee, contact Pamela Ortiz at (410) 260-1258.

## Domestic Violence Subcommittee

The Domestic Violence Subcommittee is working on a variety of issues this year under the direction of its chair, Judge Angela Eaves. Agenda items include: time standards for post-judgment DV cases; data collection; transfer rule procedures; firearms; the use of interim protective orders since their inauguration in December, 2002; court forms; full faith and credit issues; and other items relevant to the handling of domestic violence cases.

## Juvenile Subcommittee

The Juvenile Subcommittee planned a full day of trainings and workshops for the third day of this year's CINA/Delinquency Conference, which was held October 20-22, 2003 in St. Michael's, Md.



### Committee on Family Law

Hon. Nancy Davis-Loomis,  
Chair

Hon. Kathleen Gallogly Cox,  
Vice Chair

Hon. Angela Eaves

Hon. Deborah Eyler

Hon. Marcella Holland

Hon. Sherrie Krauser

Hon. Michael Loney

Hon. Robert C. Nalley

Hon. Emory A. Plitt, Jr.

Hon. James L. Sherbin

Hon. Thomas Waxter, Jr.

Hon. Julia Weatherly

Hon. David W. Young

Pamela Cardullo Ortiz, Staff

## Welcome to the Family

# New Coordinators for Cecil and Montgomery Counties

### Jessica Hagan

The Circuit Court for Cecil County is pleased to welcome Jessica Hagan as Family Law Coordinator. Jessica graduated from the University of Delaware in 2002 with a bachelor's degree in psychology. She is currently pursuing a master's degree in counseling psychology at Washington College. She comes to the circuit court after six years with Allfirst Bank.



### Suzanne Schneider

The Circuit Court for Montgomery County is pleased to welcome Suzanne Schneider as Family Division Coordinator. Suzanne comes with an extensive legal background; most recently she served as the Juvenile Division Coordinator for the circuit court. She also has experience with the ABA and served as an assistant state's attorney for five years. Born in Heidelberg, Germany, Suzanne is married and has a seven-year-old son.



## Frase v. Barnhart, cont. from p. 1

### Pre-Constitutional Origins

In arguing for a constitutional right to counsel, attorney Sachs pointed to a 15th Century English law that provided for the appointment of counsel if the litigant could prove they could not afford to pay for an attorney themselves. Sachs believes this 500-year-old rule still applies in Maryland because of language in the Maryland Declaration of Rights providing:

*That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity[.] Maryland Declaration of Rights, Article 5(a).*

Sachs points to several examples when the law was used in Maryland prior to the signing of the Declaration, rendering it thereby one of the laws adopted by Maryland from the body of English Common Law.

### A Big Change

If the Court finds that there is a constitutional right to counsel in civil matters, big changes will be in store for the State and the legal services community who may be called upon to provide that representation. Members of that community were in attendance on October 7, when the case was argued—to support the Public Justice Center in their efforts and to bear witness to what could be a groundbreaking case—the case that ensured that all Maryland residents would have a voice in court, regardless of their socio-economic status.

# The Foster Care Court Improvement Project (FCCIP) Update

Members and staff of the Foster Care Court Improvement Project have been engaged in a number of activities since the issuance of the last *Family Matters* newsletter. In addition to working on the subcommittee tasks, attention was given to other areas, such as the federal Child and Family Services Review (CFSR) that is scheduled for Maryland during the week of November 17, 2003, the voluntary placement statute, as well as completing the FCCIP evaluation. (Please refer to articles on the CFSR and Senate Bill 458 for additional information).

Completion of the FCCIP evaluation has been extended again because of the untimely gathering of information from all stakeholders. However, completion is scheduled for November 2003. A special thanks goes to the five courts, i.e., the administrative judges, and all court personnel that helped make the visits run smoothly. It has been reported that all groups of stakeholders were made available and were very cooperative during the site visits. Stay tuned for evaluation results and recommendations in the next *Family Matters* issue.

## CINA Subcommittee

Funding for representation of non-custodial parents in CINA and related cases has become available. The funding was made available to the Office of the Public Defender as a result of the contingency provision in the CINA statute that became effective in October 2001. The OPD received funding for five attorneys, four support staff, and a small amount of money for panel attorneys. This funding will allow more parents to be represented in CINA cases. Again, Congratulations to the CINA Subcommittee members and consultants for pursuing this effort.

The October 2003 summer study briefing on the TPR legislation was postponed. The CINA Subcommittee continues to seek approval for filing the TPR legislation that was drafted by it and consultants. Hundreds of comments from the various stakeholders were considered and a final draft was completed in September 2003. A copy of the proposed legislation is available upon request from Althea R. Stewart Jones (410) 260-1296.

## Representation Subcommittee

The Representation Subcommittee is planning a statewide training program for attorneys who have expressed an interest in representing parents in CINA and related proceedings. Private attorneys who represent indigent parents or guardians in CINA and related proceedings may obtain their *pro bono* credits through this representation. The lead agency in the training and coordination of this effort is the Office of the Public Defender (OPD). Attorneys interested in parent representation as a way to fulfill their *pro bono* obligations are encouraged to contact their local Office of the Public Defender or the state OPD office at (443)263-8930.

The Representation Subcommittee has been discussing the effects of the Voluntary Placement of Children cause of action (SB458). Since this new law is silent on representation of the child and parents, the Representation Subcommittee is discussing ideas regarding a protocol for the law. Ideas that were generated at the October 2003 C.A.N.D.O. conference are being reviewed.

## Statistics Subcommittee

The Statistics Subcommittee is in the process of reviewing comments on the use of the uniform court orders. Suggestions for modifications were provided to FCCIP at the C.A.N.D.O. conference. Any revised court orders will be disseminated to the courts upon completion. The uniform court orders are also made available on the Department of Family Administration website for use by attorneys responsible for generating the orders:

[www.courts.state.md.us/family/forms/jo-cinatpr.html](http://www.courts.state.md.us/family/forms/jo-cinatpr.html).

The revised statistical reports have also been disseminated. Analysis of CINA and related TPR and adoption case processing in juvenile court has been made simpler.

[cont. on p. 14](#)



# Recent Family Law Decisions

*Family Matters* highlights recently reported decisions of the Maryland Court of Appeals and Court of Special Appeals that address family law issues. Copies of reported opinions are available online at <http://www.courts.state.md.us/opinions.html>.

## Court of Appeals

### Delinquency

*In re: Timothy C.*, No. 133, September Term, 2000, filed August 7, 2003. Opinion by Bell, C.J.

The State was not required to serve the appellant when it filed its motion to extend the time for filing a delinquency petition as before the filing of the petition appellant was not a party to the case. Appellant has appealed on grounds that the court erroneously held a nunc pro tunc hearing to rule on whether there had been good cause shown for an earlier decision to grant the request to extend the time for filing. Because appellant was not a party at the time the motion was filed, appellant is precluded from challenging the ruling on the motion.

The juvenile court did not err in weighing the factors required in balancing the State's reasons for a delay of 14 ½ months before adjudication with the appellant's right to a speedy trial.

### Impact of Bankruptcy

*Klass v. Klass*, No. 125, September Term, 2002, filed September 8, 2003. Opinion by Wilner, J.

The trial court's award of alimony and child support need not be vacated because pre-judgment orders and proceedings occurred during a period when an automatic stay under § 261 of the Bank-

ruptcy Code (11 U.S.C. § 362) was in effect. The exception to the automatic stay provided in the Code applies to proceedings that seek establishment of paternity or the establishment or modification of an order for alimony, maintenance and support, even if other types of relief are sought in the action.

For purposes of §362(b) [of the Bankruptcy Code], fees awarded to a guardian ad litem for services to a child or children in a divorce, custody or child support case constitute child support, and an order establishing or modifying such fees or providing for their collection from non-estate property is not precluded by the automatic stay. The Court distinguished *Goldberg v. Miller*, 371

Md. 591, 810 A.2d 947 (2002) where it had held that for purposes of whether or not the guardian could garnish the defendant's Federal retirement benefits, guardian ad litem fees did not constitute child support under Maryland law.

The remaining aspects of the judgment—the grant of a monetary award, the entry of a QDRO, and the grant of use and possession of an automobile were subject

to the stay. Discovery initiated by appellee constituted an impermissible continuation of the proceedings and the resulting admissions were thus void. Judgment reversed and remanded on those issues.

### Interspousal Immunity

*Bozman v. Bozman*, No. 105, September Term 2002, filed August 12, 2003. Opinion by Bell, C.J.

The interspousal immunity doctrine is a vestige of the past, being unsound in the circumstances of modern life and has outlived its usefulness, if ever it had any. Thus the judicially created doctrine is abrogated. Petitioner husband was not barred from proceeding in a

cont. on p. 14





# Decisions, cont. from p. 13

malicious prosecution case against his former wife for acts that occurred prior to a divorce where husband alleged that the wife had filed charges against him for violating a Protective Order in retaliation for his initiation of divorce proceedings and his unwillingness to make concessions in those proceedings.

## Court of Special Appeals

### Child Support

*Johnson v. Johnson*, No. 2049, September Term, 2002, filed October 3, 2003. Opinion by Salmon, J.

Trial court did not err when it included appellant's bonus of \$41,400 in his income for purposes of calculating child support, even though appellant contended that a bonus at the same level was not guaranteed in the future. In child support cases, it is oftentimes necessary to calculate child support based on currently existing circumstances, even though the Court and the parties are fully aware that there is a significant possibility that in the future conditions

might change. If appellant's bonus is significantly less than that amount in future years, he can petition for a modification.

### Legal Malpractice

*Vogel v. Touhey*, No. 1435, September Term, 2002, filed July 2, 2003. Opinion by Hollander, J.

Appellant was not entitled to proceed in a malpractice claim against the attorney she had retained to represent her in a divorce but dismissed believing he had not reviewed all documents relevant to a proposed settlement where appellant, after dismissing her attorney, entered into the proposed settlement anyway despite opportunities to complete more discovery or proceed to trial. Trial court properly dismissed appellant's legal malpractice action against appellee on grounds of judicial estoppel. Appellant could not claim the settlement was unfair and inequitable when she had acknowledged its fairness in a hearing before the domestic relations master.

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## FCCIP Update, cont. from p. 12

### Training Subcommittee

Congratulations again to the Training Subcommittee on another successful conference. The Subcommittee will commence planning for the 2004 conference in January. Conference topics or other ideas for the conference should be forwarded to the Honorable David W. Young, Chair of the Training Subcommittee, or to Tracy Watkins-Tribbitt, FCCIP Assistant Director at (410) 260-1272. Attention: All newly appointed or assigned judges and masters: Do not forget to register for the April 2004 CINA/TPR Judicial Institute course.

### TPR Workgroup

The TPR Workgroup is continuing to work on identifying parents early in the CINA process. A new contract for paternity testing in the Circuit Court for Baltimore City is underway. As noted previously, other options to better identify parents are being explored. FCCIP staff has been meeting regularly with the three current permanency planning liaisons (PPLs). The PPLs cover Baltimore City and Baltimore, Calvert, Charles, Harford, Prince George's, and St. Mary's counties. An additional PPL for Anne Arundel, Carroll, and Howard counties will be hired soon.



# Around Maryland



## Baltimore City

The Baltimore City Family Division has partnered with YO! A Baltimore Youth Opportunity Movement to offer internships for children 16 to 21 years of age who are no longer enrolled in school. The internship provides a three month paid learning opportunity designed to prepare children living in Baltimore's Empowerment Zone for unsubsidized employment opportunities.

## Charles County

Charles County presented a marital property mediation training (20 hours) on Sept. 12-13, with the help of a grant from the Maryland Mediation and Conflict Resolution Office (MACRO). Local attorneys and family mediators were trained to handle all aspects of mediation in separation and divorce. Local attorneys are beginning to request property mediation for their more intransigent clients, and Charles County Circuit Court has had some successes in settling property issues without scheduling unnecessary hearings on "who gets the microwave."

## Dorchester County

### Juvenile Drug Court

The Circuit Court for Dorchester County, in partnership with the Local Management Board, Department of Juvenile Services, and the county's health department, addictions program, have worked to begin a Juvenile Drug Court. With the assistance of Gray Barton, Executive Director; and Jennifer Moore, Deputy Director; of the Drug Treatment Court Commission, planning meetings were held. Meetings included law enforcement officers, the Public Defender's Office, State's Attorney's Office and the Board of Education.

The group established a Steering Committee and authored a mission statement, eligibility criteria and identified the drug court's structure and model. That information was used by the Local Management Board to apply for an Edward Byrne Memorial State and Local Law Enforcement Assistance Grant through the Governor's Office of Crime Control & Prevention. A grant award was received and the Dorchester County Circuit Court and partners are making the final steps to begin the Juvenile Drug Court. A special thanks is extended to the Honorable Pamela North, John Fullmer and the staff of the Anne Arundel County Circuit Court Juvenile Drug Court for hosting the group's visit and providing information on how to get started.

### Pro Se Clinic/Pro Bono Hours

The Circuit Court for Dorchester County has found a way to increase access to justice without spending public dollars, while providing a service to local Bar members seeking pro bono opportunities. Three local attorneys, William H. Jones, Edward H. Nabb and Christopher R. Robinson each donate one day per month to the pro se clinic where they provide legal assistance to self-represented litigants. Special thanks are extended from the circuit court to these attorneys for their time, generosity and dedication!

## Somerset County

Somerset County has been busy renovating the annex building located next to the Somerset County Circuit Courthouse in historic Princess Anne, Md. The annex will provide office space for the masters, pro se litigants assistance program, master's court, conference room and the circuit administrator's office. Family Services and the Board of Education have coordinated an art show to be held in October where students will provide pictures depicting families for the annex. New computers, signs and furniture are arriving to complete the annex—looking good!!

## Department of Family Administration

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### mark your calendar . . .



December 8-9, 2003	Conducting Child Custody Investigations. Phil Stahl, Ph.D. Sponsored by the AFCC and the University of Baltimore. Baltimore, MD	AFCC, (608) 664-3750
December 9, 2003	Custody Decision-making in Maryland University of Maryland School of Law	UMD (410) 706-4128
January 26-30, 2004	40 hour Basic Mediation Course Annapolis, MD	Jennifer Keiser, (410) 260-1580
February 18, 2004	Coordinator Meeting Annapolis, MD	Lisa Peters, (410) 260-1580
March 24-26, 2004	20-hour Child Access Mediation Course Annapolis, MD	Jennifer Keiser, (410) 260-1580